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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,418	02/26/2002	Douglas W. Clark	IDF 1748 (4000-05800)	6792

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EXAMINER

AILES, BENJAMIN A

ART UNIT PAPER NUMBER

2142

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/083,418	Applicant(s) CLARK ET AL.	
	Examiner Benjamin A. Ailes	Art Unit 2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-27 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 14 is/are rejected.
- 7) ☒ Claim(s) 3-13 and 15-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the Amendment after non-final rejection filed 22 August 2005.
2. Claims 1-27 remain pending.

Drawings

3. The drawings were received on 22 August 2005. These drawings are acceptable for examination proceedings.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
6. Claims 1, 2, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miloslavsky (U.S. 6,128,646).

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7. Regarding claim 1, Miloslavsky discloses a distributed processing environment, comprising:

a client computer platform (Figure 1 and col. 2, lines 52-60, Miloslavsky discloses a user using a client machine that communicates with the server(s) via a data network.);

a plurality of server computer platforms, each one of said plurality of server computer platforms having an instance of an application residing thereon (Figure 1 and col. 2, lines 52-60, Miloslavsky discloses a user using a client machine that communicates with the server(s) via a data network.);

a messaging system for controlling the exchange of messages between said client computer platform and said plurality of server computer platforms, said messaging system including messaging services residing at said client computer platform and each one of said plurality of server computer platforms (col. 2, lines 52-60, Miloslavsky discloses specifically on lines 57-60 all data processing devices (client and server devices) having the ability to send and receive electronic messages (e-mails).); and

Miloslavsky discloses extensively the ability and importance of being able to control the way messages are transmitted in a network in order to process messages effectively. Miloslavsky sets forth specific criteria when the step of determining where a message should be sent from one client to any one of a plurality of available servers. Miloslavsky discloses in column 3, lines 41-45 the use of a processing center that processes the message to be transmitted. Processing of the message includes determining whom the most qualified and available support person based on various factors (keywords extracted from the message body of electronic message, subject of

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the electronic message, original sender's username of the electronic message, etc).

Once it is determined whom the most qualified support person is, the processing step then determines if a qualified person is available to receive the electronic message by extracting the time stamp and then forwards the electronic message to an available support person's server. When a support person becomes available, they log with the processing center the times they will be able to receive electronic messages (predetermined time spans) (see col. 4, line 65 – line 8). Miloslavsky does not explicitly disclose the use of predetermined time spans as criterion for load balancing, however, one of ordinary skill in the art at the time of the applicant's invention would have found it obvious to take into account the use of when a server is available (the actual times) as criteria because Miloslavsky does perform the step of distributing messages to only server platforms which are deemed "available" at the time and are only available for predetermined time spans. By taking the broadest reasonable interpretation of elements of claim 1, it is determined that Miloslavsky reads on each and every element as follows: "which one of said plurality of server computer platforms is to receive said message..." (col. 3, lines 43-45, "...router selects the most qualified and available support person to respond..."), "...based upon a time associated with said message..." (col. 4, lines 27-32, Miloslavsky discloses the use of a time stamp, col. 4, line 65 – col. 5, line 9, Miloslavsky discloses keeping track as to when support persons are available at certain servers), "...at least one message distribution rule requiring transfer of said message..." (col. 3, lines 43-45, "...router selects the most qualified and available support person to respond..."), "...to a selected one of said plurality of server computer

platforms if said time associated with said message falls within a corresponding one of a plurality of predetermined time spans.” (col. 4, lines 27-32, Miloslavsky discloses the common use of a time stamp, col. 4, line 65 – col. 5, line 9, Miloslavsky discloses the record keeping as to when support persons at servers are going to be available (pre-determined based on work scheduling).

8. Regarding claim 2, Miloslavsky discloses the use of recording the time stamp as to when a message arrives at the processing center in order to process the message correctly (col. 4, lines 27-32).

9. Claim 14 includes similar subject matter and is rejected under the same rationale as claim 1. In addition, claim 14 discloses the use of a failover rule in the case that a server computer platform has failed. If a selected server computer fails, then the electronic message is forwarded/transmitted to a subsequent server. Miloslavsky discloses a similar system wherein a strategy is used to handle situations wherein if a support person at a server platform fails to respond to a message in predetermined amount of time (i.e. 3 days), then the electronic message is re-routed to another server wherein another support person resides and is able to respond to the electronic message in a timely fashion.

Allowable Subject Matter

10. Claims 3-13 and 15-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 23-27 allowed.

Response to Arguments

12. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sadot (US 2003/0149755 A1) discloses a client-controlled load balancer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A. Ailes whose telephone number is (571)272-3899. The examiner can normally be reached on M-F 8-4, IFP Work Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571)272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

baa


BEATRIZ PRIETO
PRIMARY EXAMINER